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11-17-05
Date
Himanshu S. Amin**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re patent application of:

Applicant(s): Francis Showering

Examiner: James Smalley

Serial No: 10/009,306

Art Unit: 3727

Filing Date: November 13, 2001

Title: CONTAINER CLOSURE

Mail Stop Appeal Brief -- Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REPLY BRIEF

Dear Sir:

Applicant's representative requests that the appeal be maintained in response to the new ground of rejection made in the Examiner's Answer filed in connection with an appeal of the above-identified patent application. In the event any additional fees may be due and/or are not covered by the credit card, the Commissioner is authorized to charge such fees to Deposit Account No. 50-1063 [NOVAP100US].

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I. Status of Claims (37 C.F.R. §41.37(c)(1)(iii))

Claims 58-75 are pending in the application. Claims 58-75 stand rejected by the Examiner. The rejections of claims 58-75 are being appealed.

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II. Grounds of Rejection to be reviewed on Appeal

Claims 58-75 had been rejected under 35 U.S.C. § 103(a) as being unpatentable over Bosl *et al.* (U.S. Pat. No. 5,848,717) in view of Ohmi *et al.* (U.S. Pat. No. 5,762,217).

Claims 58-75 had been rejected under 35 U.S.C. § 103(a) as being unpatentable over Towns *et al.* (U.S. Pat. No. 5,368,178) in view of Ohmi *et al.* (U.S. Pat. No. 5,762,217).

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III. Arguments in Response to the Examiner's Answer

The Examiner continues to argue the validity of the combination of Bosl *et al.* in view of Ohmi *et al.* and Towns *et al.* in view of Ohmi *et al.* The Examiner generally asserts that these proposed combinations are proper as applied to the present invention, essentially stating that it is somehow motivated to recognize *only* the "ring member 2" element of Ohmi *et al.* as an independent feature and adapt this lone element into a combination with the devices shown in the Bosl *et al.* and Towns *et al.* references.

In the Examiner's Answer, the Examiner seeks to bolster the position that a *prima facie* showing of obviousness has been made with respect to the proposed combinations. The Examiner first states that since all three patents are drawn to the same problem, i.e. sealing containers containing carbonated beverages, therefore all these references are within the presumed knowledge of one having ordinary skill. The Examiner then cites MPEP 2144 as authority for finding a rationale to modify or combine references without a clear showing from the prior art. Nevertheless, in order to establish a *prima facie* case of obviousness, it is still incumbent upon the Examiner to meet all three basic criteria, in accordance with well-settled law:

To reject claims in an application under §103, an examiner must establish a *prima facie* case of obviousness. A *prima facie* case of obviousness is established by a showing of three basic criteria. *First, there must be some suggestion or motivation*, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. *Second, there must be a reasonable expectation of success.* *Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.* See MPEP §706.02(j). *The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure.* See *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991) (emphasis added).

In order to show motivation, the Examiner centers the argument on Ohmi *et al.*'s "opening tab 13." The Examiner cites a passage of this reference at col. 3, lines 11-20 to show that the opening tab 13, which is part of the ring member 2, can be used to promote

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easy removal of the cap from the container. The Examiner goes on to state that *"one having ordinary skill would recognize the ring as a feature to assist a user in removal of the cap when first opening the container, and would not have to further consider any sealing structure... Opening tab (13) provides a user leverage to fracture the frangible connections about the ring, thus expanding the cap skirt, and allowing removal of the cap without a tool."* Bosl *et al.* and Towns *et al.* are then discussed as having *"a sealing bead snapped under a container neck bead to keep the cap fixed in sealing contact with the container."* The Examiner then speculates that *"a tool such as a bottle opener, if not substantial human force"* would be required to pry the cap from the container, and proposes that Ohmi *et al.*'s sealing ring be combined with Bosl *et al.* and Towns *et al.* caps in order to gain the benefit of easy removal of the cap. The Examiner states that the ring of Ohmi *et al.* keeps the skirt intact and thus keeps the bead locked under the container undercut, and therefore leads to a reasonable expectation of success. The Examiner contends that separate mechanical functions should be recognized as being performed by Ohmi *et al.*'s ring and slotted skirt, and therefore one of ordinary skill would somehow read this reference and not be led to apply the sealing plug of Ohmi *et al.*

The Examiner's contentions notwithstanding, it is nevertheless not clear how this argument bolsters the *prima facie* showing of obviousness against the present claims. In centering the entire argument on Ohmi *et al.*'s "opening tab 13" and how this structure would facilitate removal of the caps of Bosl *et al.* and Towns *et al.*, it is still not apparent that such a combination would have a reasonable expectation of success. At the very least, the caps of Bosl *et al.* and Towns *et al.* appear to be axially longer than the cap of Ohmi *et al.* and therefore the "ring member 2" shown in this reference would ride very low on the rims of the other caps. Thus, it doesn't seem likely that enough leverage would be obtained by an adapted "ring member 2" to assist in cap removal.

In any event, it is clear that the proposed combination still fails to show every aspect of the claimed invention, as is also required in order to make a *prima facie* showing of obviousness. The present independent claims (e.g. claim 58) are still directed to *a container closure assembly, comprising a container mouth and a closure therefor... the closure comprising an engagement device configured for interlocking with a formation around the mouth to retain the closure on the mouth, and a band for bracing the engagement device to*

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lock it in an engaged condition by resisting outward movement of the engagement device when the band is in a bracing position. In this way, the present band is specifically claimed as *bracing and locking* an engagement device that interlocks with a formation around the container mouth. As indicated in the present specification, this interlocking of the "band 30" and the "lugs 20" enables the closure to *"withstand large forces from the internal pressure of the beverage, even during processes such as hot pasteurization."* (page 8, lines 27-29) The structure, configuration and operation of the presently claimed band are further stipulated in the other limitations of each of the independent claims. Claim 58 recites that *the band is movable intact and relative to the engagement device* and that *when the closure is in its operative position on the container mouth after fitting, the engagement device is stressed outwardly and the band is maintained in a state of static tension, said tension increasing the bracing effect of the band on the engagement device.* Claim 72 recites *abutment surfaces that produce a mechanical interlock between the band and the engagement device in a circumferential direction, to restrict movement of the band relative to the engagement device in the circumferential direction.* Claim 73 recites that *the bracing band is integral with the closure and is joined thereto by a plurality of spaced apart frangible connections positioned on each of the vertical ridges, and in that the bracing band is mounted radially outside said plurality of wall segments carrying the engagement formation.* These specific configurations and functions could not be arrived at in the combinations proposed by the Examiner. So even if Ohmi *et al.* could somehow be combined with Bosl *et al.* and Towns *et al.* and adapted to provide an opening tab that enables the respective caps to be more easily torn off, it is clear that these proposed combinations would still fail to show each and every limitation of the claimed invention, and would not lead to a reasonable expectation of success, as is required in order to establish a *prima facie* showing of obviousness.

In view of the foregoing, it is readily apparent that neither Bosl *et al.* nor Towns *et al.* nor Ohmi *et al.*, alone or in combination, make obvious the present invention as set forth in independent claims 58, 72, and 73 (and claims which depend respectively there from). Accordingly, withdrawal of this rejection is respectfully requested.

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Conclusion

For at least the above reasons, the claims currently under consideration are believed to be patentable over the cited references. Accordingly, it is respectfully requested that the rejections of claims 58-75 be reversed.

If any additional fees are due in connection with this document, the Commissioner is authorized to charge those fees to Deposit Account No. 50-1063.

Respectfully submitted,
AMIN & TUROCY, LLP



Himanshu S. Amin
Reg. No. 40,894

AMIN & TUROCY, LLP
24th Floor, National City Center
1900 East 9th Street
Telephone: (216) 696-8730
Facsimile: (216) 696-8731